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MONTANA LEGISLATIVE HISTORY

Chapter 224 19 95

Bill H 292 S _____ Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources		
Hearing Date(s)	Jan 30	✓ C	Hearing Date(s)	Mar 03	✓ C
	Feb 01	✓ C		Mar 06	✓ C
		C			C
		C			C
Date Out	Feb 02	✓ C		Mar 02	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 291 INTRODUCED BY FUCHS, ET AL.

ALLOW POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF THE BONES OF AN ELK, ANTELOPE, MOOSE, OR DEER THAT HAS BEEN LAWFULLY KILLED OR THAT HAS DIED OF NATURAL CAUSES

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO FISH & GAME		
1/31	HEARING		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	97	2
2/06	3RD READING PASSED	94	3
	TRANSMITTED TO SENATE		
2/07	FIRST READING		
2/07	REFERRED TO FISH & GAME		
2/28	HEARING		
3/02	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	30	10
3/06	3RD READING CONCURRED	42	7
	RETURNED TO HOUSE		
3/07	SIGNED BY SPEAKER		
3/08	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 116		
	EFFECTIVE DATE: 10/01/95		

HB 292 INTRODUCED BY FUCHS, ET AL.

REQUIRE A REVIEWING AUTHORITY TO PREPARE A WRITTEN STATEMENT AS TO THE CONDITIONS SURROUNDING A SUBDIVISION APPROVAL OR CERTIFICATION DENIAL OR CONDITION IMPOSITION RELATED TO SANITARY RESTRICTIONS

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO NATURAL RESOURCES		
1/20	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/30	HEARING		
2/02	COMMITTEE REPORT—BILL PASSED		
2/04	2ND READING PASSED	95	4
2/06	3RD READING PASSED	92	6
	TRANSMITTED TO SENATE		
2/07	FIRST READING		
2/07	REFERRED TO NATURAL RESOURCES		
3/03	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 224		
	EFFECTIVE DATE: 10/01/95		

HOUSE BILL NO. 292

INTRODUCED BY Daniel Fuchs

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A REVIEWING AUTHORITY TO PREPARE A WRITTEN STATEMENT AS TO THE CONDITIONS SURROUNDING A SUBDIVISION APPROVAL OR CERTIFICATION DENIAL OR CONDITION IMPOSITION RELATED TO SANITARY RESTRICTIONS; AND AMENDING SECTION 76-4-104, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-4-104, MCA, is amended to read:

"**76-4-104. Rules for administration and enforcement.** (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards ~~shall~~ must provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and ~~shall~~ must be related to size of lots~~,~~; contour of land~~,~~; porosity of soil~~,~~; ground water level~~,~~; distance from lakes, streams, and wells~~,~~; type and construction of private water and sewage facilities~~,~~; and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules ~~shall~~ must provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and ~~waste water~~ wastewater systems previously approved by the department~~,~~ if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules ~~shall~~ must further provide for:

(a) ~~the furnishing to~~ providing the reviewing authority ~~of~~ with a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ~~insure~~ ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) ~~requiring~~ evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations ~~which~~ that are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications

are submitted to the department, except that in cases ~~where~~ in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time ~~such~~ the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality ~~will~~ apply.

(9) The reviewing authority may not deny or condition a certification that a division of land is not subject to sanitary restrictions under this part unless it provides a written statement to the applicant detailing the circumstances of the certification denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

NEW SECTION. **Section 2. Review requirements -- written statement.** In addition to the requirements of 76-3-604 and 76-3-609, a governing body may not deny or condition a subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 2].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0292, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act requiring a reviewing authority to prepare a written statement as to the conditions surrounding a subdivision approval or certification denial or condition imposition related to sanitary restrictions.

ASSUMPTIONS:
1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. An application may be denied, in accordance with current Department of Health and Environmental Sciences (DHES) procedure, based upon receipt of incomplete information or failure of the applicant to provide complete information upon request by the department. A statement to that effect would be sufficient reason and evidence as required by proposed 76-4-104(9), MCA.
3. Subdivision application denials currently include reasons for the denial of certification. Current department practices are sufficient to satisfy this provision of the proposed legislation.
4. Conditions included in approval statements on certification are not currently, normally justified in the approval documents because they are the result of concerns raised and addressed during the review process. The department would provide additional documentation, evidence and justification of conditions in the approval documents, reiterating what was addressed during the review process.
5. Approximately 35% of all subdivision applications (i.e., 490 applications per year over the past 3 years) are reviewed by local departments of health under contract with DHES. The remaining 910 subdivisions (i.e., about 65% of all subdivision applications) would be reviewed by DHES.
6. One hour of additional technical staff time will be spent on each subdivision approval statement to add documentation, evidence and justification. (See assumption 4 above.) A total of 910 additional hours of technical staff time will be needed to carry out these provisions.
7. The average cost for professional technical contract staff in the Subdivision Program is $20 per hour, for a total cost of $18,200 per year in contracted services (910 hours from assumption 5 above, times $20 per hour). The current revenue from subdivision fees is sufficient for this purpose.
8. Information regarding appeals could be included in the documents as standard language.

FISCAL IMPACT:

Expenditures:	FY96 Difference	FY97 Difference
Operating Increase	18,200	18,200
Funding:		
State Special Revenue (02)	18,200	18,200

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Counties currently review approximately 490 applications per year. Using the same assumptions as noted above, county health departments would be required to spend an additional 490 hours per year to provide the necessary documentation in their approval statements for subdivisions reviewed under contract with DHES.

Dave Lewis 1-26-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DANIEL C. FUCHS, PRIMARY SPONSOR DATE

Fiscal Note for HB0292, as introduced

HB 292

HEARING ON HB 292

Opening Statement by Sponsor: **REP. DANIEL FUCHS, House District 15, Billings,** said HB 292 is designed to require more responsibility and accountability in the subdivision area. The subdivision reviewing authority will be required to prepare a written statement as to the conditions surrounding a subdivision approval, or certification denial or condition imposition related to sanitary restrictions.

Proponents' Testimony: **Andy Skinner, Self,** said currently Lewis and Clark County is arbitrarily making sand filtered systems a prerequisite for houses built in the Helena valley. The state law says if the distance to ground water is six feet the standard system can be used. Lewis and Clark County requires ten feet before the standard system can be used. During hearings the county was asked why its standards were higher than the state's. The answer was that they liked the ten feet figure. Data for the university in Bozeman shows that there is no benefit from using sand filter systems in the Helena valley under normal conditions. The County Health Department has violated all rules in effect to date. The law states that once a subdivision plat is approved the rules will not be changed. The County Health Department changed the rules three times. **Mr. Skinner** said according to his records his business is the largest home provider in Helena. Helena needs affordable housing. When the purchaser has to pay $5,500 for a system that is not needed, it will cost $17,200 over the life of the loan. HB 292 is a step toward solving some of the subdivision discrepancies.

John Shontz, Montana Association of Realtors, said HB 292 doesn't substantially change the law but it requires accountability from the people who are making decisions in local and state government about permit applications. Some arbitrary and capricious decisions have been made by local governments officials who haven't fully explained their actions nor have they provided new applicants the proper appeal process for their decisions. **Mr. Shontz** urged the committee to give HB 292 a Do Pass.

Opponents' Testimony: **Steve Pilcher, Administrator, Water Quality Division, Department of Health and Environmental Sciences.** Written testimony. **Exhibit 1**

Informational Testimony: None

Questions From Committee Members and Responses: **REP. ROBERT STORY** asked **REP. FUCHS** if there was a reason why he didn't sign the fiscal note to HB 292. **REP. FUCHS** said he didn't agree with some of the contents of the fiscal note.

REP. CLIFF TREXLER asked **Mr. Pilcher** if state laws are different than county laws on subdivisions. **Mr. Pilcher** said the state establishes the minimum standards that must be met. Counties

must meet state requirements but that does not preclude them from requiring stricter standards.

Tape 1, Side B

REP. JAY STOVALL asked **Mr. Pilcher** if the state or the county is the final authority in an appeal case. **Mr. Pilcher** said the state is the final authority.

REP. DOUG WAGNER asked **Mr. Pilcher** if the department changes its guidelines regularly. **Mr. Pilcher** said the regulations do change from time to time to keep up with changing trends and needs.

Closing by Sponsor: **REP. FUCHS** said if HB 292 saves one developer from having to litigate against the state it will be worth it.

EXECUTIVE ACTION ON HB 263

Tape 2, Side A (Tape malfunction)

Motion: **REP. AUBYN CURTISS MOVED HB 263 DO PASS.**

Motion: **REP. ROBERT STORY MOVED AMENDMENTS TO HB 263.**

Discussion: **CHAIRMAN KNOX** postponed further action on HB 263 until Wednesday, February 1, 1995 so work could be done on the amendments.

EXECUTIVE ACTION ON HB 274

Motion: **REP. DOUG WAGNER MOVED HB 274 DO PASS.**

Tape 2, Side B

Discussion: **REP. BILL TASH** said if the Department of State Lands (DSL) doesn't have the authority to harvest the timber in a timely manner sometimes the opportunity to harvest will be lost if they it has to go through the review process. It will put added pressure on the department and there will be budget constraints if there has to be a full review process for every large or small timber sale opportunity.

Motion: **REP. DOUG WAGNER MOVED AMENDMENTS TO HB 274.**

Discussion: **REP. WAGNER** explained the amendments.

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL DATE 1-30-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

EXHIBIT 1
DATE 1-30-95
HB 292

HOUSE BILL 292

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator
Water Quality Division

The Department of Health and Environmental Sciences (DHES) has reviewed House Bill 292 and have prepared a fiscal note on the same. We certainly cannot argue with the need to hold agencies accountable for their decisions and with the need to communicate that information to the regulated community. We do, however, find ourselves questioning the necessity of this bill in light of the process of review currently utilized in carrying our responsibilities under the Sanitation in Subdivision Act. I would like to quickly explain the current process and share with you examples of the documents that we feel address the sponsor's concern.

Persons wishing to subdivide their property are required to complete an application form and submit the same along with supporting technical data to DHES for review and approval. Each application is subjected to a thorough review and if that review identifies deficiencies or technical problems, a denial letter is sent to the applicant or their representative. Attached to that denial letter will be a list of additional information that is required. Considerable communication then normally takes place between DHES staff and the applicant or their representative until all issues are addressed and a Certificate of Plat Approval issued.

That document carefully and clearly states the conditions of that approval. The approval is valid only as long as those conditions are adhered to.

If an application is denied, the applicant is entitled to a hearing before the board of Health and Environmental Sciences or the agency Director as provided in Sec. 76-4-126, MCA. If informing applicants of this provision was of serious concern, appropriate language could be added to our denial statement.

Our review process seems to be working well, given the fact that we have seen subdivision activity increase from approximately 1900 lots in 1990 to nearly 5000 lots in each of the past two years. We are always willing to consider modifications to our program that will allow the program to function more effectively for the applicants and for the agency.

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601
A. C. Knight, M.D.
DIRECTOR

November 9, 1977

Mr. Clinton E. Fuchs
2723 Miles Avenue
Billings, MT 59101

Re: Cabot Subdivision, 2nd Filing
Yellowstone County

Dear Mr. Fuchs:

We are required by Section 69-5003, R.C.M. 1947 to take final action on a subdivision proposal within 60 days of receipt of plans. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiences are noted on the attached sheet.

Because of the inadequate information, we herewith decline to approve the proposed division. Unless the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction.

You may obtain the necessary information and re-submit the application for our review; but if you do so, please use the Submittal title noted above to assure that the information is placed with you particular proposal.

If you have any questions on the above, please feel free to call on us at 449-3946.

Sincerely,

James Melstad
Subdivision Bureau
Environmental Sciences Division

JM:dmg
Enclosures
cc: L. Stow, R.S., Courthouse Rooms 310-311, Billings

EXHIBIT 1
DATE 1-30-95
HB 292

ADDITIONAL INFORMATION REQUIRED

1. The enclosed copy of a letter from the Montana Bureau of Mines and Geology points out that the water supply situation in this area is an unknown in terms of further subdivision development. Because of the questionable supply, we will require that Sections (7)(a)(ii) and (7)(e) of our regulation (enclosed) be complied with. The Kaufman well could perhaps be used for some of the testing, but I feel that a hydrogeologist's or qualified professional engineer's report will also be necessary to adequately address the water supply question. Please submit the results of the testing and the report when they are complete.

2. The soils descriptions provided in the Environmental Assessment indicate that bedrock may be a problem. Section (3)(e)(vi) of the regulations stipulates that test holes or hammer seismic tests shall be provided where bedrock may exist. Please provide at least ten test holes or hammer seismic tests at well scattered locations throughout the subdivision. The tests should be conducted by someone competent in the field of soils science. Particular attention should be directed toward the presence of any bedrock, in addition to descriptions of at least the top six feet of the soil profile.

3. The drainage for Plateau Place and portions of Pioneer Road and Timber Trail appear to drain to the northeast corner of the subdivision. Please clarify where this runoff water will drain when it leaves the subdivision. If the adjacent landowner does not want this drainage over his property, a French drain or similar facility should be considered and may be required.

4. We are required to have a copy of the final plat for our final review. Please submit a copy when completed.

MONTANA BUREAU OF MINES AND GEOLOGY
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY
BUTTE, MONTANA 59701
(406) 792-8321

May 19, 1977

Mr. Richard Gee, Director of Current Planning
Billings-Yellowstone City-County Planning Board
Room 303, Courthouse
Billings, Montana 59101

Dear Mr. Gee:

Regarding the Oxbow Subdivision, Second Filing, in sec. 1, T. 1 N., R. 26 E., Yellowstone County, the following comments are submitted for your consideration. The application was reviewed for ground- and surface-water potential, sewage-disposal plans, and geologic hazards. Our comments are made without the benefit of field examination, using existing reference materials and the information provided by the applicant. Should the applicant disagree with our interpretation of the available data, we will reconsider comments for which additional technical data and narrative are provided by a qualified professional geologist, hydrogeologist, or engineer.

The proposed subdivision does not lie within a 100-year floodplain.

Septic systems will generally be adequate except on Wr Class soils, where slopes of 15 percent or steeper may preclude their use.

The ground water supply does not seem adequate to support such a great number of wells in this area. The Judith River Formation normally yields only 5 to 15 gallons per minute except where it has excellent porosity or where fractures enhance water movement. The lowered water levels in wells adjacent to the proposed subdivision are almost certainly the result of overdrafts on the aquifer. The normal rate of ground-water percolation through the Judith River Formation is sufficiently slow that last year's lowered precipitation amounts should not affect wells for several years, so therefore it is probably not the cause for lower well-water levels.

Well spacings of 250 feet apart or less will almost certainly create severe well interference and accelerate the lowering of water levels in the aquifer. If the water in the Judith River Formation becomes depleted, wells will have to be deepened at least 750 feet to encounter water of the Eagle Formation.

Water quality in much of the Judith River Formation is marginal for domestic use. Water samples should be taken from adjacent wells or from test wells within the proposed subdivision and analyzed for their suitability for human use. If water from the Judith River Formation here is of acceptable quality, we would recommend that the subdivider drill several wells in the area and use them as part of a centralized water supply system for the proposed subdivision. Even the use of a centralized water supply system, however, may not be adequate to prevent excessive lowering of water levels in the Judith River aquifer.

THE BUREAU OF MINES AND GEOLOGY WAS ESTABLISHED BY LAW IN 1919 AS A DEPARTMENT OF MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY, TO PROMO
EFFICIENT DEVELOPMENT OF MONTANA'S MINERAL RESOURCES BY GATHERING AND PUBLISHING INFORMATION ON THE GEOLOGY, TOPOGRAPHY, AND MINERAL DEPOSITS OF T
STATE, INCLUDING METALS, NON METALS, COAL, OIL, GAS, AND UNDERGROUND WATER SUPPLY.

EXHIBIT 1
DATE 1-30-95
HB 292

There is little ground-water recharge to the Judith River Formation in this area. Most of the recharge derives from the west. Recharge from the north or northwest is uncertain because of the northeast-trending fault north of this area.

Because of potential geologic problems with the Cushman Bainville loam and Worland loam, as pointed out in the Environmental Assessment (page 3 and 5), we urge caution and perhaps an on-site inspection by a professional geologist or soils engineer. At the time of this inspection, attention should also be given to the slope west of the proposed subdivision for potential landslides or rockfalls.

Sincerely,

Robert N. Bergantino
Hydrogeologist

H. G. McClernan
Economic Geologist

RNB:HGM:ech

Copy to DCA/Division of Planning

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601
A. C. Knight, M.D.
DIRECTOR

December 23, 1977

Mr. Clinton Fuchs
2723 Miles Avenue
Billings, MT 59101

Re: Oxbow Subdivision, 2nd Filing
Yellowstone County

Dear Mr. Fuchs:

We are required by Section 69-5003, R.C.M. 1947 to take final action on a subdivision proposal within 60 days of receipt of plans. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiences are noted on the attached sheet.

Because of the inadequate information, we herewith decline to approve the proposed division. Unless the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction.

You may obtain the necessary information and re-submit the application for our review; but if you do so, please use the Submittal title noted above to assure that the information is placed with you particular proposal.

If you have any questions on the above, please feel free to call on us at 449-3946.

Sincerely,

James Nelstad
Subdivision Bureau
Environmental Sciences Division

JN:rk
Enc.
cc: Ed L. Stow, Courthouse, Rms. 310-311, Billings 59101

EXHIBIT 1
DATE 1-30-95
HB 292

ADDITIONAL INFORMATION REQUIRED --

Oxbow Subdivision 2nd Filing
Yellowstone County

1. A hydrogeologists' assessment of the groundwater supply is necessary because of the question raised by the Montana Bureau of Mines and Geology on the depletion of the Judith River Formation. Also, our regulations have no provision for waiving the requirement, especially where the adequacy of the supply has been questioned.

The services of a hydrogeologist(s) are available in Bozeman, although this is not meant as a recommendation for the services of a particular professional, Please keep in mind that cisterns may be proposed as a water supply if a hauler will certify that he can provide service to the subdivision. If wells are to be utilized even for an auxiliary source, the hydrogeologists' assessment is still necessary.

2. The soils test will still be required. Soils holes dug on Pleasant View Subdivision revealed fragmented sandstone at depths as shallow as 10 inches. The large area encompassed by Oxbow Subdivision - 2nd leaves much unknown in terms of soils. Seven well scattered holes would be adequate to determine if bedrock conditions may be present. If it appears that bedrock conditions are present, more holes may be required.

3. A copy of the final plat is still required.

JM:mk

See following letter.
JM

EXHIBIT 1
DATE 1-30-95
HB 292

YOU ARE REQUESTED to record this certificate by attaching it to the plat of said subdivision filed in your office as required by law.

DATED this 23rd day of Jnauary, 1978.

A.C. HIGHT, M.D., F.C.C.P.
DIRECTOR

By: _____
Edward W. Casne, Chief
Subdivision Bureau
Environmental Sciences Division

Owners Name:

Clinton Eudis

STATE OF MONTANA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
CERTIFICATE OF SUBDIVISION PLAT APPROVAL
(Section 69-5001 through 69-5010, R.C.M. 1947)

To: County Clerk and Recorder
Yellowstone County
Billings, Montana

No. 56-78-111-16
E.S. S 78/74

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Odow Subdivision, Second Filing, in Section 1, T1N, R26E consisting of eighty-two (82) lots have been reviewed by personnel of the Subdivision Bureau, and,

THAT the documents and data required by Section 69-5001 through 69-5010, R.C.M. 1947 and the rules of the Department of Health and Environmental Sciences made and promulgated pursuant thereto have been submitted and found to be in compliance therewith, and,

THAT approval of the plat of said subdivision is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT the lots shall be used for single-family dwellings, and,

THAT the individual water system will consist of cisterns constructed in accordance with the criteria established in ARM 16-2.14(10)-S14340 and the most current standards of the Department of Health and Environmental Sciences, and,

THAT water for cisterns shall be obtained from the City of Billings and shall be hauled by a licensed water hauler, and,

THAT the individual sewage treatment system will consist of a septic tank and subsurface drainfield of such size and description as will comply with Yellowstone County Septic System Regulations and ARM 16-2.14(10)-S14340, and,

THAT the subsurface drainfields for lots in Blocks 2 and 4 shall have absorption areas of sufficient size to provide 205 square feet per bedroom and the subsurface drainfields for lots in Blocks 1, 3 & 5 shall have absorption areas of sufficient size to provide 190 square feet per bedroom and the subsurface drainfields for lots in Block 6 shall have absorption areas of sufficient size to provide 175 square feet per bedroom, and,

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

THAT no sewage treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any domestic water supply source, and,

THAT water supply and sewage treatment systems will be located as shown on the approved plans, and,

THAT plans for the proposed water and individual sewage treatment systems will be reviewed and approved by the Yellowstone County Health Department before construction is started, and,

THAT the developer shall provide each purchaser of property with a copy of the plat, approved location of water supply and sewage treatment system and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT departure from any criteria set forth in the approved plans and specifications and ARM 16-2.14(10)-S14340 when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Health and Environmental Sciences.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB292

DATE 1-30-95 SPONSOR(S) Rep. Fuchs

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
J. Shontz	MT ASSOC REALTORS	292		X
Steve Pilcher	DHES	292	X	
ANDY SKINNER	SELF	292		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

a section is left out **REP. ELLINGSON'S** amendment would pick that up.

REP. STORY withdrew his amendment.

Motion/Vote: **REP. ELLINGSON MOVED HIS AMENDMENT TO HB 263.** Voice vote was taken. **Motion carried unanimously.**

Motion/Vote: **REP. ELLINGSON MOVED HB 263 DO PASS AS AMENDED.** Voice vote was taken. **Motion carried 13 to 5.**

EXECUTIVE ACTION ON HB 292

Motion: **REP. DANIEL FUCHS MOVED HB 292 DO PASS.**

Tape 3, Side B

Discussion:

REP. BILL TASH said he was in favor of HB 292 because there does need to be some accountability in regards to certificates of surveys in both state and local departments.

Vote: Voice vote was taken. **Motion carried 17 to 1.**

HOUSE STANDING COMMITTEE REPORT

February 2, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **House Bill 292** (first reading copy -- white) **do pass.**

Signed: _____

Dick Knox, Chair

Committee Vote:

proponent nor opponent in the House, but merely came to answer questions.

Closing by Sponsor:

REPRESENTATIVE ELLIS commented that this bill would be funded by 2% of increased yield from trust lands. He was opposed to putting staffing costs into the bill. The fiscal note shows an impact on the state budget and that should be addressed by **SENATOR BROOKE'S** amendment.

The bill would not change the fact that State Lands resource managers would still be managing the resource and timber companies would not be deciding by themselves whether or not forests would be clear-cut.

{Comments: Chairman Lorents Grosfield relinquished the Chair to Vice Chairman Larry Tveit in order to present a bill in another committee.}

HEARING ON HB 292

Opening Statement by Sponsor:

REPRESENTATIVE DAN FUCHS, HD #15, Billings, told the committee HB 292 was drafted to eliminate arbitrary and capricious administration, ensure accountability of local reviewing authorities, and provide a more efficient review of subdivisions.

The fiscal note pointed out that the bill was expected to create one additional hour of work. The bill would more clearly define the steps in obtaining approval for a subdivision.

Proponents' Testimony:

John Shontz, Montana Association of Realtors, supported the bill because it stated that if an application for a sanitary permit (septic tank, etc.) from a reviewing authority were denied, the reason must be stated in writing, the evidence must be listed, and the appeals process must be outlined. At present, that information is not always provided in written form. Government entities that do not provide this information in writing leave themselves open to litigation. He thought it was a very reasonable bill.

Anne Hedges, Montana Environmental Information Center, also supported the bill because it will hold everyone accountable.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR CHRISTIAENS asked **Steve Pilcher** how the bill would affect the Department of Health.

Steve Pilcher, Department of Health & Environmental Sciences (DHES), said his department had testified in opposition to the bill when it was introduced because it merely outlined the procedure they were currently following. If the bill required more documentation, DHES would not have the resources, and their request for additional resources in HB 2 had not met with a favorable response. He said it was very difficult to keep up with subdivision activity and it had been necessary to hire consultants to assist DHES employees to meet timeframes in current law.

SENATOR CHRISTIAENS asked if the bill went beyond the scope of present activities by his department. In response, **Mr. Pilcher** distributed copies of a subdivision review **(EXHIBIT #6).**

REPRESENTATIVE FUCHS said the steps in the bill were being done at the state level; the problem was with local reviewing authorities. Thirty-five percent of the time, applications were reviewed at the local level and the bill was intended to require that local authorities follow the state's example.

ACTING CHAIRMAN TVEIT asked why **Mr. Pilcher** had testified against the bill in the house, but was neutral in this hearing until called upon.

Mr. Pilcher said it just a matter of priorities. He had testified in the same way in the House. He signed in as an opponent. He was back and forth between hearings and wasn't sure whether or not he would be available to answer questions at this hearing. He agreed the bill would have a much greater impact on local government, but wanted to clarify the department's role.

ACTING CHAIRMAN TVEIT asked if **Mr. Pilcher** felt the bill was unnecessary because DHES was already doing what the bill mandated.

Mr. Pilcher said DHES was not completely certain that the process they were following would satisfy all the requirements of HB 292. If more detail were necessary, additional resources would be required and those resources were identified in the fiscal note.

SENATOR CHRISTIAENS asked what would happen to the bill if no FTE's were available.

REPRESENTATIVE FUCHS said he didn't understand what costs **Mr. Pilcher** referred to. He pointed out that the fiscal note said the current revenue from subdivision fees was sufficient and only one hour of additional technical staff would be used for each subdivision approval. He said he thought it was just as easy to do it right the first time and that the counties should follow the state's guidelines.

Mr. Pilcher said he was just concerned that legislation might be passed that could not be implemented because of the lack of funding. That has happened before and he wanted to be sure it would not happen again.

Closing by Sponsor:

REPRESENTATIVE FUCHS told the committee he had no more comments.

{Comments: the meeting was recorded on 2 tapes, 60 minutes each side.}

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-3-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	X		
B.F. "CHRIS" CHRISTIAENS	X		
MACK COLE	X		
WILLIAM CRISMORE	X		
MIKE FOSTER	X		
TOM KEATING	X		
KEN MILLER	X		
JEFF WELDON	X		
BILL WILSON	X		
LARRY TVEIT, VICE CHAIRMAN	X		
LORENTS GROSFIELD, CHAIRMAN	X		

SEN:1995
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CS-09

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601
A. C. Knight, M.D.
DIRECTOR

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-03-95
BILL NO. HB-292

November 8, 1977

Mr. Clinton D. Fuchs
2723 Miles Avenue
Billings, MT 59101

Re: Cabin Subdivision, 2nd Filing
Yellowstone County

Dear Mr. Fuchs:

We are required by Section 69-5003, R.C.M. 1947 to take final action on a subdivision proposal within 60 days of receipt of plans. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiences are noted on the attached sheet.

Because of the inadequate information, we herewith decline to approve the proposed division. Unless the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction.

You may obtain the necessary information and re-submit the application for our review; but if you do so, please use the Submittal title noted above to assure that the information is placed with you particular proposal.

If you have any questions on the above, please feel free to call on us at 449-3946.

Sincerely,

James Welstad
Subdivision Bureau
Environmental Sciences Division

JW:dg
Enclosures
cc: E. Stow, R.S., Courthouse Rooms 310-311, Billings

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2-03-95
BILL NO. HB 292

ADDITIONAL INFORMATION REQUIRED

1. The enclosed copy of a letter from the Montana Bureau of Mines and Geology points out that the water supply situation in this area is an unknown in terms of further subdivision development. Because of the questionable supply, we will require that Sections (7)(a)(ii) and (7)(e) of our regulation (enclosed) be complied with. The Kaufman well could perhaps be used for some of the testing, but I feel that a hydrogeologist's or qualified professional engineer's report will also be necessary to adequately address the water supply question. Please submit the results of the testing and the report when they are complete.

2. The soils descriptions provided in the Environmental Assessment indicate that bedrock may be a problem. Section (9)(e)(vi) of the regulations stipulates that test holes or hammer seismic tests shall be provided where bedrock may exist. Please provide at least ten test holes or hammer seismic tests at well scattered locations throughout the subdivision. The tests should be conducted by someone competent in the field of soils science. Particular attention should be directed toward the presence of any bedrock, in addition to descriptions of at least the top six feet of the soil profile.

3. The drainage for Plateau Place and portions of Pioneer Road and Timber Trail appear to drain to the northeast corner of the subdivision. Please clarify where this runoff water will drain when it leaves the subdivision. If the adjacent landowner does not want this drainage over his property, a French drain or similar facility should be considered and may be required.

4. We are required to have a copy of the final plat for our final review. Please submit a copy when completed.

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-03-95
BILL NO. H.B. 292

MONTANA BUREAU OF MINES AND GEOLOGY
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY
BUTTE, MONTANA 59701
(406) 792-8321

May 19, 1977

Mr. Richard Gee, Director of Current Planning
Billings-Yellowstone City-County Planning Board
Room 303, Courthouse
Billings, Montana 59101

Dear Mr. Gee:

Regarding the Oxbow Subdivision, Second Filing, in sec. 1, T. 1 N., R. 26 E., Yellowstone County, the following comments are submitted for your consideration. The application was reviewed for ground- and surface-water potential, sewage-disposal plans, and geologic hazards. Our comments are made without the benefit of field examination, using existing reference materials and the information provided by the applicant. Should the applicant disagree with our interpretation of the available data, we will reconsider comments for which additional technical data and narrative are provided by a qualified professional geologist, hydrogeologist, or engineer.

The proposed subdivision does not lie within a 100-year floodplain.

Septic systems will generally be adequate except on Ml Clay soils where slopes of 15 percent or steeper may preclude their use.

The ground-water supply does not seem adequate to support such a great number of wells in this area. The Judith River Formation normally yields only 5 to 15 gallons per minute except where it has excellent porosity or where fractures enhance water movement. The lowered water levels in wells adjacent to the proposed subdivision are almost certainly the result of overdrafts on the aquifer. The normal rate of ground-water percolation through the Judith River Formation is sufficiently slow that last year's lowered precipitation amounts should not affect wells for several years, so therefore it is probably not the cause for lower well-water levels.

Well spacings of 250 feet apart or less will almost certainly create severe well interference and accelerate the lowering of water levels in the aquifer. If the water in the Judith River Formation becomes depleted, wells will have to be deepened at least 750 feet to encounter water of the Eagle Formation.

Water quality in much of the Judith River Formation is marginal for domestic use. Water samples should be taken from adjacent wells or from test wells within the proposed subdivision and analyzed for their suitability for human use. If water from the Judith River Formation here is of acceptable quality, we would recommend that the subdivider drill several wells in the area and use them as part of a centralized water supply system for the proposed subdivision. Even the use of a centralized water supply system, however, may not be adequate to prevent excessive lowering of water levels in the Judith River aquifer.

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-03-95
BILL NO. HB 292

There is little ground-water recharge to the Judith River Formation in this area. Most of the recharge derives from the west. Recharge from the north or northwest is uncertain because of the northeast-trending fault north of this area.

Because of potential geologic problems with the Cushman Bainville loam and Worland loam, as pointed out in the Environmental Assessment (page 3 and 5), we urge caution and perhaps an on-site inspection by a professional geologist or soils engineer. At the time of this inspection, attention should also be given to the slope west of the proposed subdivision for potential landslides or rockfalls.

Sincerely,

Robert N. Bergantino
Hydrogeologist

H. G. McClernan
Economic Geologist

RNB:HGM:ech

Copy to DCA/Division of Planning

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601
A. C. Knight, M.D.
DIRECTOR

December 23, 1977

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-03-95
BILL NO. HB-292

Mr. Clinton Fuchs
2723 Miles Avenue
Billings, MT 59101

Re: Oxbow Subdivision, 2nd Filing
Yellowstone County

Dear Mr. Fuchs:

We are required by Section 69-5003, R.C.M. 1947 to take final action on a subdivision proposal within 60 days of receipt of plans. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiences are noted on the attached sheet.

Because of the inadequate information, we herewith decline to approve the proposed division. Unless the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction.

You may obtain the necessary information and re-submit the application for our review; but if you do so, please use the Submittal title noted above to assure that the information is placed with you particular proposal.

If you have any questions on the above, please feel free to call on us at 449-3946.

Sincerely,

James Nelstad
Subdivision Bureau
Environmental Sciences Division

JN:rk
Enc.
cc: Ed L. Stow, Courthouse, Rms. 310-311, Billings 59101

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-03-95
BILL NO. HB 292

ADDITIONAL INFORMATION REQUIRED --

Oxbow Subdivision 2nd Filing
Yellowstone County

1. A hydrogeologists' assessment of the groundwater supply is necessary because of the question raised by the Montana Bureau of Mines and Geology on the depletion of the Judith River Formation. Also, our regulations have no provision for waiving the requirement, especially where the adequacy of the supply has been questioned.

The services of a hydrogeologist(s) are available in Bozeman, although this is not meant as a recommendation for the services of a particular professional, Please keep in mind that cisterns may be proposed as a water supply if a hauler will certify that he can provide service to the subdivision. If wells are to be utilized even for an auxiliary source, the hydrogeologists' assessment is still necessary.

2. The soils test will still be required. Soils holes dug on Pleasant View Subdivision revealed fragmented sandstone at depths as shallow as 10 inches. The large area encompassed by Oxbow Subdivision - 2nd leaves much unknown in terms of soils. Seven well scattered holes would be adequate to determine if bedrock conditions may be present. If it appears that bedrock conditions are present, more holes may be required.

3. A copy of the final plat is still required.

JM:mk

See following letter.
JM

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-03-95
BILL NO. HB 292

STATE OF MONTANA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
CERTIFICATE OF SUBDIVISION PLAT APPROVAL
(Section 69-5001 through 69-5010, R.C.M. 1947)

To: County Clerk and Recorder
Yellowstone County
Billings, Montana

No. 56-78-[illegible]
E.S. S 78/74

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Oxbow Subdivision, Second Filing, in Section 1, T1N, R26E consisting of eighty-two (82) lots have been reviewed by personnel of the Subdivision Bureau, and,

THAT the documents and data required by Section 69-5001 through 69-5010, R.C.M. 1947 and the rules of the Department of Health and Environmental Sciences made and promulgated pursuant thereto have been submitted and found to be in compliance therewith, and,

THAT approval of the plat of said subdivision is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT the lots shall be used for single-family dwellings, and,

THAT the individual water system will consist of cisterns constructed in accordance with the criteria established in ARM 16-2.14(10)-S14340 and the most current standards of the Department of Health and Environmental Sciences, and,

THAT water for cisterns shall be obtained from the City of Billings and shall be hauled by a licensed water hauler, and,

THAT the individual sewage treatment system will consist of a septic tank and subsurface drainfield of such size and description as will comply with Yellowstone County Septic System Regulations and ARM 16-2.14(10)-S14340, and,

THAT the subsurface drainfields for lots in Blocks 2 and 4 shall have absorption areas of sufficient size to provide 205 square feet per bedroom and the subsurface drainfields for lots in Blocks 1, 3 & 5 shall have absorption areas of sufficient size to provide 190 square feet per bedroom and the subsurface drainfields for lots in Block 6 shall have absorption areas of sufficient size to provide 175 square feet per bedroom, and,

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

THAT no sewage treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any domestic water supply source, and,

THAT water supply and sewage treatment systems will be located as shown on the approved plans, and,

THAT plans for the proposed water and individual sewage treatment systems will be reviewed and approved by the Yellowstone County Health Department before construction is started, and,

THAT the developer shall provide each purchaser of property with a copy of the plat, approved location of water supply and sewage treatment system and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT departure from any criteria set forth in the approved plans and specifications and ARM 16-2.14(10)-S14340 when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Health and Environmental Sciences.

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2-03-95
BILL NO. HB 292

YOU ARE REQUESTED to record this certificate by attaching it to the plat of said subdivision filed in your office as required by law.

DATED this 23rd day of Jnauary, 1978.

A.C. HIGHT, M.D., F.C.C.P.
DIRECTOR

By: _____
Edward W. Casne, Chief
Subdivision Bureau
Environmental Sciences Division

Owners Name:

Clinton Eudie

DATE 3-3-95

SENATE COMMITTEE ON NAT RESOURCES

BILLS BEING HEARD TODAY: HJR 10 HB-201
HB-292

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Arley A Adams				
Alan A Adams				
Anne Hedges	MEIC	HJR 10 HB 292	X X	
Steve Pilcher	DHES	HB292		X
J. Shontz	MT Assn Realtors	292	Y	

VISITOR REGISTER

3

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXECUTIVE ACTION ON HB 292

Motion/Vote:

SENATOR CHRISTIAENS MOVED TO CONCUR IN HB 282. MOTION CARRIED WITH SENATOR WELDON VOTING NO. (SENATOR CHRISTIAENS will carry the bill)

{Comments: the meeting was recorded on 2, 60 minute tapes}

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-6-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	X		
B.F. "CHRIS" CHRISTIAENS	X		
MACK COLE	X		
WILLIAM CRISMORE	X		
MIKE FOSTER	X		
TOM KEATING	X		
KEN MILLER	X		
JEFF WELDON			X
BILL WILSON	X		
LARRY TVEIT, VICE CHAIRMAN	X		
LORENTS GROSFIELD, CHAIRMAN	X		

SEN:1995
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CS-09

SENATE STANDING COMMITTEE REPORT

March 7, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 292 (third reading copy -- blue), respectfully report that HB 292 be concurred in.

Signed: Loretta Cromfield
Senator Loretta Cromfield, Chair

Amd. Coord.
Sec. of Senate

SEN. CHRISTIANS
Senator Carrying Bill

531147SC.SRF